

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
2007 NOV -8 AM 9:16
CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY

JAVIER CONTRERAS
Plaintiff(s)

v.

ACCOUNTS RETRIEVABLE, LLC
dba **COHEN, DREYFUS,**
AND ASSOCIATES
and **JOHN and/or JANE DOES 1-10**
Defendant(s)

§
§
§
§
§
§
§
§
§
§

JUDGE KATHLEEN CARDONE

Cause No. _____

EP07CA0390

COMPLAINT

JURISDICTION AND VENUE

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C. § 1367 for pendent state law claims.
2. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"); and the invasions of Plaintiff's personal privacy and the intentional infliction of emotional distress caused by these Defendants in their illegal efforts to collect a consumer debt.
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.

PARTIES

4. Plaintiff Javier Contreras (hereinafter "CONTRERASS") is a natural person who resides here in the City of El Paso, County of El Paso, State of Texas, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3) and Texas Finance Code 392.001(6).
5. Defendant Accounts Retrievable, LLC dba COHEN, DREYFUS, and ASSOCIATES (hereinafter "ACCOUNTS RETRIEVABLE") is a collection agency operating from an address of 3830 Williams Blvd, Suite D, Kenner, LA 70065, and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6) and Texas Finance Code 392.001(6). ACCOUNTS RETRIEVABLE can be served with process by mailing a copy of same to its registered agent, Jeffrey W. Hurley, 3830 Williams Blvd, Suite D, Kenner, LA 70065.

LAW OFFICE OF

SCOTT A.
VOGELMEIER

1112 Myrtle Ave.
El Paso, TX 79901
(915) 544-3100
Fax: (915) 577-0160

6. Defendants John and/or Jane Does No. 1-10 are employees of ACCOUNTS RETRIEVABLE and are collection agents and are "debt collectors" as that term is defined by 15 U.S.C. § 1692a(6).
7. The true names and capacities, whether individual, corporate, associate or otherwise of the Defendants sued herein as JOHN and/or JANE DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues such Defendants by such fictitious names. Plaintiff will seek permission from the court to amend this complaint to show the true names and capacities of such Defendants when the same have been ascertained. Plaintiff is informed and believes that each of the Defendants designated as a John or Jane Doe was in some manner responsible for the occurrences and injuries alleged herein.
8. At all times mentioned herein, each of the Defendants was the agent and employee of the other named Defendants, and in doing the things alleged were acting within the course and scope of such agency and employment, and in doing the acts herein alleged were acting with the consent, permission and authorization of the remaining named Defendants. All actions of each of the defendants were ratified and approved by the other named Defendants.

FACTUAL ALLEGATIONS

9. On or about September 14, 2007, Defendant ACCOUNTS RETRIEVABLE mailed, or caused to be mailed, the attached Exhibit A which is an attempt to collect a consumer debt.
10. Exhibit A is the first and only written correspondence mailed to Plaintiff CONTRERAS by Defendant ACCOUNTS RETRIEVABLE.
11. Exhibit A states that Defendant ACCOUNTS RETRIEVABLE has located Plaintiff CONTRERAS' place of employment, bank, and property.
12. Upon information and belief, Defendant ACCOUNTS RETRIEVABLE had not performed an asset search prior to mailing exhibit A and therefore stating that it had is false and deceptive.
13. Further, Exhibit A states "[i]f you fail to contact our office in [sic] regards to this debt with in [sic] 10 days of the receipt of this letter, your account will be transferred to our department of finalization for further action."
14. By requiring Plaintiff CONTRERAS to contact Defendant ACCOUNTS RETRIEVABLE within 10 days, Defendant ACCOUNTS RETRIEVABLE unlawfully overshadowed the language required by 15 U.S.C. § 1692g.

LAW OFFICE OF

SCOTT A.
VOGELMEIER

1112 Myrtle Ave.
El Paso, TX 79901
(915) 544-3100
Fax: (915) 577-0160

15. Further, notwithstanding the fact that Plaintiff CONTRERAS, during several telephone conversations with Defendant made it clear to Defendant ACCOUNTS RETRIEVABLE that this is not his obligation or account, Defendant ACCOUNTS RETRIEVABLE has persistently attempted to collect it from him.
16. The conduct of Defendants and each of them in harassing Plaintiff(s) in an effort to collect an alleged debt by making false, deceptive and/or misleading representations in connection with the collection of a debt; by engaging in conduct, the natural consequences of which, is to harass, oppress or abuse Plaintiff(s) in connection with the collection of a debt; and by using unfair or unconscionable means to collect a debt is violative of numerous and multiple provisions of the FDCPA including, but not limited to, 15 U.S.C. § 1692d; 1692e; 1692e(2)(A), (5), and (10); 1692f; and 1692g.

Policies and Practices of Defendant

17. It was the policy and practice of Defendant(s) to send collection letters in the form of *Exhibit A* to consumers "[i]f you fail to contact our office in [sic] regards to this debt with in [sic] 10 days of the receipt of this letter, your account will be transferred to our department of finalization for further action." which contradicts and overshadows the thirty day validation notice.

Summary

18. Plaintiff has suffered actual damages as a result of these illegal collection communications in the form of humiliation, anger, anxiety, emotional distress, fear, frustration, embarrassment, amongst other negative emotions, as well, he has suffered from unjustified and abusive invasions of his personal privacy.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 et seq.

19. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
20. The foregoing acts and omissions of each and every Defendant constitutes numerous and multiple violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.
21. As a result of each and every one of Defendants' violations of the FDCPA, Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in

LAW OFFICE OF

SCOTT A.
VOGELMEIER

1112 Myrtle Ave.
El Paso, TX 79901
(915) 544-3100
Fax: (915) 577-0160

an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each and every Defendant herein.

COUNT II

INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

22. Plaintiff incorporates by reference all of the paragraphs of this Complaint as though fully stated herein.
23. The Plaintiff had a reasonable expectation of privacy, solitude and seclusion, in Plaintiff's private concerns or affairs.
24. Defendants intentionally intruded on the Plaintiff's solitude, seclusion, and/or private affairs.
25. These intrusions and invasions by Defendants occurred in a way that would be highly offensive to a reasonable person in that position.
26. As a result of such invasions of privacy, Plaintiff suffered a severe injury and is therefore entitled to actual damages in an amount to be determined at trial from each and every Defendant.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

27. Plaintiff incorporates by reference all of the paragraphs of this Complaint as though fully stated herein.
28. Defendants' acted intentionally or recklessly while attempting to collect on the alleged debt.
29. Defendants' conduct was extreme and outrageous.
30. Defendants' conduct was directed at the Plaintiff or a third person in the Plaintiff's presence.
31. The Defendants' conduct proximately caused the Plaintiff emotional distress.
32. The emotional distress suffered by Plaintiff was severe.

LAW OFFICE OF

SCOTT A.
VOGELMEIER

1112 Myrtle Ave.
El Paso, TX 79901
(915) 544-3100
Fax: (915) 577-0160

TRIAL BY JURY

33. Plaintiff is entitled to, and hereby respectfully demands, a trial by jury. US Const. amend. 7. Fed.R.Civ.P. 38.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against each and every Defendant:

- for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against each and every Defendant.
- for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against each and every Defendant.
- for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against each and every Defendant.
- for an award of actual damages from each and every Defendant for the emotional distress suffered as a result of the FDCPA violations and invasions of privacy in an amount to be determined at trial;
- for an award of actual damages from each and every Defendant for the intentional infliction of emotional distress suffered as a result of the FDCPA violations and invasions of privacy in an amount to be determined at trial; and
- for such other and further relief as may be just and proper.

Respectfully submitted,



SCOTT A. VOGELMEIER

Attorney for Plaintiff

State Bar No.: 24015139

1112 Myrtle Avenue

El Paso, Texas 79901

(915) 544-3100

(915) 577-0160 Facsimile

LAW OFFICE OF

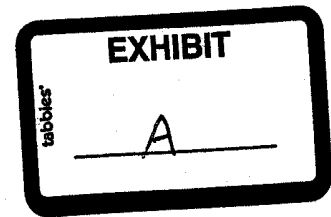
**SCOTT A.
VOGELMEIER**

1112 Myrtle Ave.
El Paso, TX 79901
(915) 544-3100
Fax: (915) 577-0160

Cohen, Dreyfus & Associates
3830 Williams Blvd Ste-D
Kenner, Louisiana 70065
504-461-9550
504-461-9551

September 19, 2007

Javier Contreras
2504 MOUNTAIN AVE
EL PASO, TX 79930



Original Creditor: CitiFinancial

Original Account: 09540111829

BALANCE DUE: \$9,365.80 as of 9/19/2007

Dear Javier:

This office has purchased and owns the above-mentioned account. **Be advised:** Cohen, Dreyfus has completed our Asset and Liability Investigation Audit.

WE HAVE LOCATED YOUR PLACE OF EMPLOYMENT, BANK, AND PROPERTY.

We do not mean to alarm you however, you have deliberately evaded you CitiFinancial debt.

CONSIDER THIS AN OFFICIAL DEMAND FOR PAYMENT IN FULL.

If you fail to contact our office in regards to this debt with in 10 days of the receipt of this letter, your account will be transferred to our department of finalization for further action.

If it is determined by our Finalization department that we may proceed with filing suit against you, additional fees may be added to the balance of your account.

Such a lawsuit could result in a judgment against you, in which event you will be responsible for the principal amount of this debt plus interest and costs of suit. You may also be responsible for paying the attorney's fees incurred by Cohen, Dreyfus in prosecuting the lawsuit against you. Enforcement of the judgment could result in garnishment of your wages, bank account and other assets and income as well as the recording of a lien against your home or other real property.

You can avoid paying the costs and attorney's fees resulting from a lawsuit by paying this obligation now. In order to give you an opportunity to do so, I shall wait 30 days from the date you receive this letter before filing a lawsuit against you. Unless you contact me within that 30-day period to dispute the validity of this debt, I will assume that the debt is valid and that you do not intend to resolve this matter voluntarily. **THERE WILL BE NO FURTHER NOTICE OR DEMAND IN WRITING FROM THIS OFFICE PRIOR TO THE FILING OF SUIT.**

If you notify me in writing, within 30 days of receiving this letter, that you dispute the validity of this debt, or any portion thereof, I will obtain and send you written documentation evidencing the debt, if any exists. Upon your written request within the 30-day period, I will provide you with the name and address of the original creditor, if it is different from the current creditor. This is an attempt to collect a debt, and any information obtained will be used for that purpose.

I urge you to contact us immediately to arrange final settlement of this obligation.

If you need more time to pay please call our office TOLL FREE at 866-461-9547 OR 504-461-9550

YOU MAY ALSO QUALIFY FOR AN EXTENSION or REDUCED SETTLEMENT.

Once payment has been received Cohen, Dreyfus will forward to you a certified **"PAID IN FULL LETTER OF RELEASE."**

Cohen, Dreyfus & Associates will notify all of the **CREDIT BUREAUS** that this account is **PAID IN FULL.**

Sincerely,



Joe Jessie

Senior Asset Investigator